Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

JESSE FULK and DONALD CEARLOCK,

Petitioners,

v.

UNITED TRANSPORTATION UNION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. What is the appropriate degree of deference which should be extended to a labor union with respect to questions involving the interpretation of its constitution?

2. Should the federal courts defer to a labor union's interpretation of its constitution when that interpretation is contrary to the plain meaning of the text of the constitution even if that interpretation serves an objective which its officials believe is worthy?

PARTIES TO THE PROCEEDING

The parties to this proceeding are as follows:

The Petitioners are Jesse Fulk and Donald Cearlock.

The Respondent is the United Transportation Union.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioners, JESSE FULK and DONALD CEARLOCK, respectfully request that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in the above entitled proceeding on November 12, 1998.

OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit is reported at 160 F.3d 405 (7th Cir. 1998) and is reprinted in the appendix to this petition beginning at App. 1.

The decision and opinion of the United States District Court for the Central District of Illinois is published at 995 F. Supp. 937 and is reprinted in the appendix to this petition beginning at App. 9.

JURISDICTION

The Petitioners invoked the jurisdiction of the District Court relying upon §301 of the "Labor-Management Relations Act of 1947" [29 U.S.C. Section 185]. On March 4, 1998 the District Court granted the Respondent's motion for summary judgment.

The Court of Appeals for the Seventh Circuit had jurisdiction of this case under 28 United States Code §1291. On November 12, 1998 the Court of Appeals entered a judgment and opinion affirming the judgment of the District Court. In its opinion it held that the Respondent was entitled to summary judgement because its actions were in furtherance of a reasonable

interpretation of its constitution. In this respect it concluded that: 1) the Respondent's characterization of the collective bargaining proposal as a "hybrid agreement" was reasonable; and 2) the Respondent's actions in permitting the collective bargaining proposal to be ratified by sub-majorities was not unreasonable.

On February 12, 1999 the Court of Appeals denied Petitioners' request for rehearing en banc (App. 18).

This Court has jurisdiction to review this case under 28 United States Code §1254.

STATEMENT OF THE CASE

This case was decided by the District Court on a motion for summary judgment. Rule 56(c) of the Federal Rules of Civil Procedure mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of a genuine dispute of fact on an element essential to his case and upon which he will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

In the fall of 1991 the Petitioners were craft employees of the Norfolk & Western Railway Company ["RAILWAY"] and members of the Respondent. Within the operating system of the RAILWAY were a series of geographic units commonly referred to as seniority districts. The number of employees working within each seniority district varied depending upon the workforce needs of the RAILWAY to carry on its business in that particular territory. The Petitioners worked in the Springfield District.

The Respondent was the collective bargaining representative of conductors, brakemen and yardmen em-

ployed by the RAILWAY. In 1991 and for many years prior to that time it was organized through a series of subdivisions known as general committees of adjustment. Among these was the General Committee of Adjustment for Norfolk Southern Corporation, N&W Railway, Wabash District ["COMMITTEE"]. The COMMITTEE represented employees of the RAILWAY who worked on the territory of the former Wabash Railroad Company.

In September of 1984 the RAILWAY and the Respondent entered into a crew consist agreement covering the conductor, brakemen and yardman crafts who worked throughout the entire operating system of the RAILWAY. The agreement anticipated a reduction in the size of train crews resulting from attrition in the RAILWAY's work force. Under its terms, as craft members left its employ the RAILWAY was not required to fill their vacated positions and was permitted because of the resulting work force reduction to assign as few as one brakeman and one conductor to a train.

The Agreement also created the productivity fund which was a device that allowed craft employees to share in 50% of the savings derived by the RAILWAY from operating trains with reduced crews.

At the close of each fiscal year the RAILWAY made a payment to its craft employees of their share of the savings realized through the year through the operation of trains with reduced crews.

In apportioning the productivity fund proceeds among the RAILWAY's work force consideration was given to the number of times in each seniority district the RAILWAY operated trains with reduced crews. An account-

ing system was created as a means for tracking within each seniority district when trains operated with reduced crews. The purpose of this system was to determine the money employees within each seniority district might receive through the productivity fund based upon the number of times within their seniority district the RAILWAY operated a train with a reduced crew.

The productivity fund arrangement applied uniformly throughout the entire operating system of the RAILWAY. The RAILWAY eagerly embraced the productivity fund arrangement and utilized it whenever it could throughout its entire operating system. The practice of the RAILWAY in operating trains with reduced crews was generally consistent and uniform among the various seniority districts.

In 1991 the Respondent and the RAILWAY negotiated modifications to the crew consist arrangement. It was the desire of the RAILWAY to operate trains with a one person crew so long as existing craft employees were not involuntarily displaced. It proposed that when there was a sufficient reduction in the work force within a seniority district through attrition the RAILWAY be permitted to operate trains with a one person crew instead of hiring replacement employees. It also proposed abolishing the productivity fund. In exchange for being relieved of any future financial liability through the productivity fund arrangement when operating trains with reduced crews it offered to pay each existing craft employee a total of $60,000.00. This payout proposal was contingent upon the Respondent's acceptance of the RAILWAY's modifications in the crew consist agreement.

The Respondent's officials reacted to the RAILWAY's proposal by suggesting that employees who were about to separate from employment with the RAILWAY receive a lesser share of the productivity fund buyout than its members who would continue to work for it. The RAILWAY was not receptive to that suggestion and remained steadfast in its proposal to pay the same amount to each craft employee.

In November of 1991 the two proposals of the RAILWAY were submitted by the Respondent to a vote of the crafts covered under the jurisdiction of the COMMITTEE. Each proposal was to be voted upon separately by the Respondent's membership.

The General Chairman of the COMMITTEE opposed the RAILWAY's productivity fund buyout proposal and communicated his thoughts in that respect through a cover letter to craft members at the time he forwarded the ballots.

When the ballots were returned to the COMMITTEE from craft members throughout the system who worked within its jurisdiction they were tabulated differently.

The votes of all craft members within the jurisdiction of the COMMITTEE were counted together with respect to the crew consist proposal. Under that tabulation method the proposal carried. The productivity fund proposal, however, was not tabulated on the basis of the total votes throughout the jurisdiction of the COMMITTEE. Instead, the ballots were counted and the results determined separately on the basis of the vote within each seniority district.

The decision to have the productivity fund buyout proposal tabulated on the basis of the vote of individual

seniority districts rather than by the membership as a whole was not the result of any negotiation or agreement with the RAILWAY nor was it at the instance of the RAILWAY. Instead, it was the idea of the Respondent's officials.

A total of 600 votes were cast on the productivity fund buyout proposal by the membership within the entire COMMITTEE. Approximately two-thirds of the members voted in favor of the proposal.

However, within the Springfield District the proposal was defeated by one vote.

Article 85 of the Respondent's constitution provides a mechanism for collective bargaining proposals to be ratified by members within a General Committee of Adjustment. With respect to the ratification of a system agreement it provides in pertinent part as follows:

> "The General Chairperson must poll the entire membership holding seniority and working in the craft involved on the property by mail referendum ballot prior to signing any system agreements and be governed by the majority of the votes cast."[1]

Under its constitution the COMMITTEE did not have the authority to interpret the laws and constitution of the Respondent. That power under Article 16 of its constitution was reserved to the International President subject to appeal to the Respondent's Board of Directors. Under Article 38 of the constitution only the Inter-

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[1] The term "system agreement" is not defined in the constitution. According to the COMMITTEE's General Chairperson it is an agreement which applies to the entire area encompassed by the COMMITTEE.

national President of the Respondent with the approval of its Board of Directors could take action to meet situations not covered under its constitution.

Upon discovering the manner in which the vote on the productivity fund proposal was counted the Petitioners wrote a letter to the President of the Respondent on December 9, 1991 protesting the constitutionality of the manner in which the vote on the productivity buyout proposal was tabulated. On December 20, 1991 the President of the Respondent in a letter to the Petitioners characterized the productivity fund buyout proposal as a system agreement and pointed out that within their seniority district it was not approved by both crafts.

The Petitioners in their complaint claim that the Respondent denied them rights secured by the constitution contending that the manner in which the productivity buyout proposal was tabulated was contrary to its requirements. Specifically, they contend that under Article 85 of the constitution the vote should have been decided on the basis of the total vote of all members voting on the buyout proposition rather than on the basis of the separate votes of each seniority district.

The Respondent moved for summary judgment before the District Court with respect to the Petitioners' claim arguing that its conduct was consistent with its constitutional obligation to them. In this respect it asserted that the actions of its officials were an outgrowth of a reasonable interpretation of its constitution and the District Court must defer to that interpretation.

The District Court viewed the issue in dispute to turn upon the correct interpretation which should be given

to Article 85 of the Respondent's constitution. It concluded that the Respondent's interpretation given the factual context of the case was not unreasonable and thus it was obliged to defer to that interpretation. In reaching that conclusion it relied upon several considerations. First, it recognized that the portion of Article 85 relied upon by the Petitioners related to the ratification of a "system agreement". It was not convinced that the Petitioners had established that the productivity buyout proposal represented a system agreement. Second, it concluded that the voting method was the product of agreements reached between the RAILWAY and the Respondent and thus the concerns of the Petitioners were more properly directed toward the terms of the arrangement rather than with the procedure employed to adopt it. Third, it concluded that Article 85 could be reasonably construed to permit district by district voting and a general chairman need reasonably do no more than submit system agreements to "some sort of majority vote" in which every member of the Respondent is allowed to participate. Finally, it concluded that the framers of the Respondent's constitution probably did not intend for Article 85 to be applied as rigidly as the Petitioners contend. Noting that the constitution does not mention productivity funds the District Court surmised that its authors probably never anticipated the kind of district-specific agreement which was at issue in the case.

The Court of Appeals affirmed the decision of the District Court. It recognized that in a dispute concerning the meaning of a labor union's constitution it would defer to the union's interpretation so long as the interpretation is not unreasonable or even "patently unrea-

sonable". In concluding that the Respondent's actions were in furtherance of a reasonable interpretation of its constitution it made two determinations. First, it adopted the Respondent's argument that the productivity buyout fund proposal was not a "system agreement" subject to ratification under Article 85 of its constitution, but was instead a "hybrid agreement" incorporating elements of both a system agreement and a local agreement. In this respect it found no provision in the constitution limiting collective bargaining agreements to either system or local agreements although the constitution mentions only those two types. Second, it concluded that Article 85 is ambiguous in terms of the meaning of the term "majority" and concluded that because of the variations in the value of the productivity funds from district to district it could not be said that the Respondent's interpretation of its constitution was unreasonable.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

It is a well established policy in the administration of the federal labor laws that judicial intrusions into the internal affairs of labor unions be limited. This policy is predicated upon a recognition that courts have neither a monopoly on fairness nor a sufficient expertise in the administration of labor organizations to warrant a pervasive judicial involvement in internal union affairs.

This petition raises the question of what limits should be placed upon that policy when courts are called upon to review the interpretation a labor union gives to

agreements and compacts dealing with its internal government. Specifically, it addresses the issue of whether a member of a labor union may successfully challenge in the federal courts the actions of its officials when those actions conflict with the clear meaning of a provision in its constitution even though that interpretation might serve an objective which the union's officials believe is worthy.

In this case the actions of the Respondent's officials in adopting an arrangement for tabulating the votes on the productivity fund buyout proposal were wrong in two respects. First, the method they employed is clearly contrary to the provisions of Article 85 of the Respondent's constitution if the productivity fund buyout proposal constitutes a "system agreement". Second, to the extent that the productivity fund buyout proposal was not a "system agreement" but was instead a "hybrid agreement" as the Respondent suggests then under the terms of its constitution the President and Board of Directors of the Respondent rather than its general chairman should have prescribed the manner in which the ratification vote would be tabulated. Hence, the actions of its officials in establishing the ratification method were ultra vires.

If this Court grants the writ it presumably will better define the scope of the deference federal courts give to labor unions in interpreting their internal government compacts. In so doing it will balance and resolve a tension between two sometimes competitive and conflicting principles. The first is the interest of labor unions in controlling their internal affairs with minimal judicial oversight. The second is the right of a union member to expect that its activities will be administered in ac-

cordance with the rule of law as embodied in its constitution and by-laws. A labor union's constitution is considered a contract and the jurisdiction of the federal courts under §301 of the "Labor Management Relations Act of 1947" [29 U.S.C. §185] has been extended to permit district courts to consider claims against a labor union by its members when its conduct violates its constitution [*Wooddell v. International Brotherhood of Electrical Workers, Local 71*, 502 U.S. 93 (1991)]. Unlimited deference by the federal courts to a labor union's interpretation of its constitution and by-laws would effectively render the right of a union member to challenge conduct which is contrary to its constitution illusory.

The Petitioners do not suggest that federal courts decline giving deference to the democratically elected officials of labor unions in conducting and overseeing their internal affairs, but instead urge that uniform and sensible limits be placed on that deference to insure that the affairs of labor unions will be undertaken consistent with the terms of their constitutions and bylaws even when their officials have misgivings about the end which will result from following constitutional procedure.

While the federal courts have been unanimous in endorsing a deferential policy toward labor unions in conducting their internal affairs the degree of deference given to labor unions in interpreting their bylaws and constitutions has not been consistent.

On the one hand several courts have adopted the view that deference must be given to the interpretation given by a labor union to its constitution unless that interpre-

tation is patently unreasonable.[2] Several other courts have taken a less deferential approach and have deferred to a labor union's interpretation of its constitution if that interpretation was reasonable.[3] Still others have deferred to a labor union's interpretation of its constitution so long as that interpretation is reasonable and made in good faith.[4]

One court has adopted a policy of deferring to a Union's interpretation of its constitution provided that interpretation is reasonable, made in good faith and not

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[2] [*Local No. 48 United Brotherhood of Carpenters and Joiners of America v. United Brotherhood of Carpenters and Joiners of America*, 920 F.2d 1047, 1051-1052 (1st Cir. 1990); *Dow v. United Brotherhood of Carpenters and Joiners of America*, 1 F.3d 56, 58 (1st Cir. 1993); *Mason Tenders Local Union 59 v. Laborers' International Union of North America*, 924 F.Supp. 528, 543 (S.D.N.Y. 1996); *Plumbers Local 334 v. Plumbers International Union*, 669 F.2d 129, 131 (3rd Cir. 1982); *Papianni v. International Association of Bridge, Structural and Ornamental Ironworkers, Local 11*, 622 F.Supp. 1559, 1567 (D.C. N.J. 1985); *Newell v. International Brotherhood of Electrical Workers*, 789 F. 2d 1186, 1189 (5th Cir. 1986); and *Air Wisconsin Pilots Protection Committee v. Sanderson*, 909 F.2d 213, 218 (7th Cir. 1990)].

[3] [See *Schonfeld v. Raftery*, 359 F.Supp. 380, 388 (S.D.N.Y. 1973); *Frisch v. District Council No. 9, Brotherhood of Painters*, 493 F.2d 1061 (2nd Cir. 1974); and *United States v. International Brotherhood of Teamsters*, 743 F.Supp. 155, 162 (S.D.N.Y. 1990)].

[4] [*Monzillo v. Biller*, 735 F.2d 1456 (D.C. Cir. 1984); *Martin v. Radio-Electronics Officers' Union*, 813 F.Supp. 878, 881 (D.D.C. 1993); *Rogers v. Lucassen*, 777 F.Supp. 997, 999 (D.D.C. 1991); and *United States v. International Union of Petroleum and Industrial Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989)].

contrary to the language of the constitution[5] while other courts have established a policy of deference to a labor union's interpretation of its constitution provided that interpretation is both fair and reasonable.[6]

Moreover, the federal courts have applied a variety of differing approaches to determine whether a labor union's interpretation of its governing documents was of sufficient reasonableness to warrant judicial deference.

The First Circuit has determined that a labor union's interpretation of its constitution is not patently unreasonable if it is plausible, not a product of bad faith, facially sufficient or grounded in arguable authority [*Dow v. United Brotherhood of Carpenters and Joiners of America*, supra at p. 58]. In *Felton v. Ullman*, 629 F.Supp. 251, 255 (S.D.N.Y. 1986), the test employed by the district court for determining whether a labor union's interpretation was unfair or unreasonable was whether it was supported by "arguable authority". In *Papianni v. International Association of Bridge, Structural and Ornamental Iron Workers* (supra at pp. 1567-

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[5] [*Allen v. United Transportation Union*, 964 F.2d 818, 821 (8th Cir. 1992)].

[6] [*Department of Labor v. Aluminum, Brick and Glass Workers International Union*, 941 F.2d 1172, 1177 (11th Cir. 1991); *United Brotherhood of Carpenters and Joiners of America, Local Union No. 267 v. United Brotherhood of Carpenters and Joiners of America, South Central Ohio District Council*, 992 F.2d 1418, 1423-1424 (6th Cir. 1993); *Millwright Local Union No. 1079 v. International Brotherhood of Carpenters and Joiners of America*, 878 F.2d 960, 962 and 965 (6th Cir. 1989); and *Dole v. United Automobile, Aerospace and Agricultural Implement Workers of America*, 970 F.2d 1562, 1566 (6th Cir. 1992)].

1568, 1570) the test employed for determining whether the union's interpretation was patently unreasonably was whether it was illogical, impermissible or foreclosed by law or unlawful discriminatory motive. Other courts have employed a standard for determining whether a labor union's interpretation of its constitution was patently unreasonable based upon whether it acted in bad faith.[7]

Some courts have suggested that a labor union's interpretation will be considered fair and reasonable if its position is supported by the text of the constitution.[8] In furtherance of this view at least one court has interpreted the test of reasonableness as whether the union's interpretation is a fair interpretation of the words and provisions contained in its constitution rather than whether it would be fair and reasonable for its constitution to provide the end sought by the union through its interpretation [*Local 317 National Post Office Mail Handlers, Watchmen, Messengers, and Group Leaders Division of the Laborer's, etc. v. National Post Office Mail Handlers, etc.*, 696 F.2d 1300, 1302 (11th Cir. 1983)] while another court has said that in order for a union's interpretation of its constitutional language to be considered reasonable it must be interpreted in a fashion which gives every word in its text

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[7] *O'Neill v. Airline Pilots Association, International*, 939 F.2d 1199, 1206-1207 (5th Cir. 1991); and *Motion Picture & Video Tape Editors Guild, Local 776 v. International Sound Technicians, Local 695*, 800 F.2d 973, 975 (9th Cir. 1986).

[8] [*Dole v. United Automobile, Aerospace and Agricultural Implement Workers of America* (supra at p. 1566); *Maher v. International Brotherhood of Electrical Workers*, 15 F.3d 711, 714 (7th Cir. 1994)].

operative effect [See *Reich v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators*, 32 F.3d 512, 515-516 (11th Cir. 1994)].

Still other courts have deferred to a labor union's actions in furtherance of its interpretation of its constitution if there is no direct conflict between those actions and the provisions in its constitution [*Local 1052 United Brotherhood of Carpenters and Joiners of America v. Los Angeles County District Council of Carpenters*, 944 F.2d 610, 615 (9th Cir. 1991); and *Teamsters Joint Council No. 42 v. International Brotherhood of Teamsters*, 82 F.3d 303, 306 (9th Cir. 1996)].

Although there is an established federal policy of judicial deference to labor unions in the interpretation of their bylaws and constitutions it is apparent that deference is not limitless in scope. It is equally apparent that the federal courts have not employed consistent standards and criteria for determining when and under what circumstances judicial deference toward a labor union's interpretation of its constitution is warranted.

While labor unions should have the freedom and flexibility to engage in the management and operation of their internal affairs without being unnecessarily second-guessed by the courts, it is equally important that members of labor unions be entitled to expect that their officials will not disregard the union's laws.

Such an entitlement would be hollow if through judicial deference a labor union is effectively permitted to ignore or disregard their laws. In the interest of developing a sound, cohesive and uniform federal labor policy it is worthwhile that appropriate and uniform

criteria be established in determining when deference should be given to a labor union's interpretation of its constitution and bylaws.

THE COURT OF APPEALS EFFECTIVELY SANCTIONED A LABOR UNION'S ACTIONS IN DISREGARDING THE PROVISIONS OF ITS CONSTITUTION.

The Court of Appeals concluded that the Respondent's actions in determining the manner in which the productivity fund buyout proposal would be ratified were an outgrowth of a reasonable interpretation of its constitution for two reasons neither of which can withstand scrutiny.

First, it concluded that the productivity fund buyout proposal represented a "hybrid agreement" rather than a "system agreement" and thus Article 85 of the Union's constitution was inapplicable to the ratification process [A1]. Hence it concluded that the Respondent's actions in allowing the proposal to be ratified by submajorities was reasonable. There are two inherent flaws with its analysis.

In the first place, to the extent that the productivity fund buyout proposal was in fact a "hybrid agreement" and ratification of that type of agreement was not contemplated by the Respondent's constitution the Respondent did not entrust the determination of how the ratification should be undertaken to its appropriate officers. The Respondent's constitution has a specific mechanism for determining matters which were not clearly addressed by its terms. Article 38 of its constitution provided that the International President with approval of its Board of Directors is empowered to take such

action in those circumstances as is deemed necessary to protect the interest of both the Respondent and its members. That did not occur. The International President of the Respondent did not sanction the ratification method until confronted with the Petitioners' challenges and its Board of Directors never approved the ratification process. Thus, the Court of Appeals approved of conduct by the Respondent's officials who under the terms of its constitution were not entrusted with that authority.

In the second place there is a genuine issue of material fact about whether the productivity buyout proposal was a "system agreement" as contended by the Petitioners or a "hybrid agreement" as suggested by the Respondent. There was abundant evidence presented in the summary judgment proceeding developed before the District Court suggesting that the proposal was a "system agreement". The Respondent's constitution does not define the term "system agreement". According to the COMMITTEE's General Chairperson a system agreement was one which applied throughout the entire area of the COMMITTEE [A1]. The RAILWAY's proposal was intended to extend through its entire operating system including all of the operating territory encompassed within the COMMITTEE's jurisdiction. It involved a subject (the productivity fund) which had always been treated as a system agreement. The Respondent's International President in his letter to the Petitioners on December 20, 1991 characterized the buyout proposal as a "system agreement" and made no reference to it being a hybrid agreement.

This case was decided through the vehicle of summary judgment. The Petitioners' claims sounded in con-

tract and sought an award of money damages. Thus, to the extent disputed issues of fact material to the resolution of the lawsuit existed the Seventh Amendment to the constitution mandated the Petitioners' entitlement to a jury trial on those issues [*Teamsters v. Terry*, 494 U.S. 558 (1990)]. If reasonable persons applying the definition of a system agreement utilized by the COMMITTEE General Chairperson could differ as to whether the productivity buyout fund proposal was a system agreement that question is one of fact which should be left for a jury [See *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81 (1991)].

The second point made almost in passing by the Court of Appeals when it approved of the reasonableness of the Respondent's method of tabulating the vote was that the term "majority" as used in Article 85 was ambiguous and thus deference to the Respondent's interpretation was appropriate. In concluding that the term "majority" was ambiguous it is apparent from the discussion in its opinion that the Court of Appeals was not guided so much by the language which appeared in Article 85 as it was by extrinsic evidence relating to the circumstances surrounding the productivity fund buyout proposal which indicated that the value of the productivity funds varied widely from district to district. Typically, under the rules of contract construction extrinsic evidence should not be considered in construing the meaning of an unambiguous contract. The Court of Appeals, in concluding that the plan adopted by the Respondent to allow the vote to be determined by separate majorities within the various seniority districts rather than a single majority was not unreasonable, stated:

> "Article 85 does not plainly bar the Union's interpretation, and, in light of the district-by-district variation in value, it cannot be said that such an interpretation was unreasonable."

The Respondent's interpretation of the term "majority" which the Court of Appeals determined to be reasonable cannot be reconciled with the text of Article 85 of its constitution. The ratification process for a system agreement under Article 85 imposes two duties upon a general chairperson. First, he must "poll the entire membership holding seniority and working in the craft involved on the property". According to the Respondent's interpretation of the term system agreement this would necessarily include all members of affected crafts working within the jurisdiction of the COMMITTEE. Second, he must "be governed by the majority of the votes cast". The phrase "majority of the votes cast" can refer only to all of those who were polled. The meaning of the term "majority" from the language employed in Article 85 is clear and not susceptible to multiple interpretations. The interpretation approved by the Court of Appeals creates a ratification process which is not sanctioned by the text of Article 85. There is no language in that article suggesting even by implication that ratification of a system agreement could be done by sub-majorities. Hence, the Court of Appeals is effectively granting the Respondent license to interpret its constitution in a fashion which is contrary to the plain meaning of its language.

The apparent justification by the Court of Appeals for the reasonableness of the Respondent's interpretation is that because of a variance among the seniority districts with respect to the frequency of trains operating

with reduced crews it was not unreasonable to permit each seniority district to determine the fate of its productivity fund.

Thus, the determination of the Court of Appeals that the Respondent's interpretation of its constitution was reasonable was not based so much by vagaries of the language employed in the constitution, but instead upon external factors suggesting that ratification on the basis of separate seniority districts would be fair to the Respondent's members.

This goes to the heart of the question presented in this petition. There is no doubt that the Respondent's officials were opposed to the RAILWAY's productivity fund buyout proposal and felt that it was inconsistent with the interests of its membership, particularly those members who had many years of service left. It devised a tabulation mechanism which authorized each seniority district to control the fate of its productivity fund buyout proposal. In doing so, however, the Respondent's officials ignored the mandates in its constitution governing their activities in submitting such a proposal to its membership for ratification. While it cannot be said that the Respondent's actions in that respect were motivated by bad faith considerations there were two flaws in its actions. First, to the extent that the proposal was a system agreement it was ratified in a manner which cannot be reconciled with the plain meaning of the language employed in the constitution for the ratification of a system agreement. Second, to the extent the productivity fund buyout proposal was a hybrid agreement instead of a system agreement the Respondent's officials who devised the ratification mechanism were pre-

cluded under its constitution from making that determination.

While the officials of a labor union should be encouraged to pursue activities which they with sincere conviction believe serve the best interests of its members, their enthusiasm should be tempered by adherence to the clear requirements of its constitution and bylaws. Otherwise, the provisions in such documents can be meaningless and the government of a labor union would be conducted not on the basis of the rule of law, but rather upon the whim of its officials.

A member of a labor union is expected to adhere to and be bound by its bylaws and constitution. He should reasonably expect no less from its officials. To the extent its constitution prescribes methods for its internal operations a labor union should be expected to comply with that constitutional methodology. It is not an unnecessary intrusion into the internal affairs of a labor organization for the federal courts to enforce the reasonable expectations of a union member that his union will comply with the procedural requirements set forth in the compact establishing its government. When a labor union's activities are clearly inconsistent with those requirements judicial abstinence effectively renders such provisions a nullity.

CONCLUSION

For these reasons, the writ of certiorari should be issued to review the questions presented in this petition.

Respectfully submitted,

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